

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BILLY RAY O'NEAL,)	No. C 09-5315 LHK (PR)
)	
Plaintiff,)	ORDER OF DISMISSAL
)	
v.)	
)	
COUNTY OF SAN FRANCISCO, et al.,)	
)	
Defendants.)	
_____)	

Plaintiff, a California prisoner proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that while he was in the custody of the San Francisco County Jail (“SFCJ”), Defendants Deputy Camarra and Deputy Reymundo conducted an invasive body cavity search, during which Camarra and Reymundo proceeded to attack him using excessive force. On August 12, 2010, the Court reviewed Plaintiff’s complaint and ordered him to show cause why this action should not be dismissed without prejudice for failure to exhaust administrative remedies. On August 24, 2010, Plaintiff filed a response to the order to show cause. As Plaintiff has not shown that he exhausted his administrative remedies prior to filing suit, this action is dismissed without prejudice.

DISCUSSION

The Prison Litigation Reform Act (“PLRA”) provides that “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a

1 prisoner confined in any jail, prison, or other correctional facility until such administrative
2 remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Exhaustion is mandatory and
3 no longer left to the discretion of the district court. *Woodford v. Ngo*, 126 S. Ct. 2378, 2382
4 (2006) (citing *Booth v. Churner*, 532 U.S. 731, 739 (2001)). The PLRA exhaustion requirement
5 requires “proper exhaustion” of available administrative remedies. *Woodford*, 126 S. Ct. at
6 2387. The plain language of the PLRA requires that prior to filing suit, all “administrative
7 remedies available [must be] exhausted.” 42 U.S.C. § 1997e(a). The Ninth Circuit has
8 interpreted 1997e(a) to mean that an action *must* be dismissed unless the prisoner exhausted his
9 available administrative remedies *before* he or she filed suit, even if the prisoner fully exhausts
10 while the suit is pending. *McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002).

11 In his original complaint, Plaintiff conceded that he did not present his claims for review
12 through the SFCJ’s grievance procedure. In his August 24, 2010 response to the order to show
13 cause, Plaintiff states that he filed a “Citizens Complaint” and civil rights complaint in 2007. He
14 states that he believed these filings were sufficient to exhaust his administrative remedies.
15 Unfortunately for Plaintiff, he has not satisfied the exhaustion requirement under *McKinney*.
16 Plaintiff’s complaint indicates that he had not exhausted his claims prior to filing this action, and
17 his response to the order to show cause does not excuse his failure to exhaust. Thus, the
18 complaint will be dismissed without prejudice.

19 CONCLUSION

20 The instant action is DISMISSED without prejudice to filing a new complaint in a new
21 case containing claims that have been exhausted through California’s prison administrative
22 process.

23 The Clerk shall enter judgment, terminate any pending motions and close the file.

24 IT IS SO ORDERED.

25 DATED: 9/3/2010

26 
LUCY H. KOH
United States District Judge